

Date of decision: 19.1.1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Mr. Ravi R. Tripathi for the petitioners.
Mr. Y.S. Mankad for respondent No.1

Coram: S. K. KESHOTE, J
(19.1.1996)

C.A.V. JUDGMENT:

Having heard the learned counsel for the parti..R

do not find any substance in the writ petition. The petitioners who were working at the Municipal City Dispensary, Anjar as Class IV employees have filed this writ petition praying therein:

- (i) to issue a writ of mandamus or any other

appropriate writ, direction or order in the nature of writ of mandamus, directing the respondent Municipality to pay the arrears on the basis of revised pay scale as per the Gujarat Civil Services (Revision of Pay) Rules, 1975 with effect from 1-12-1974, after fixing the petitioners at an appropriate stage in the scale of Rs.210-270, and further be pleased to direct the respondent Municipality to treat the petitioners as Government employees and to give them all consequential benefits;

(ii) to issue a writ of ma.R

appropriate writ, direction or order in the nature of writ of mandamus directing the respondent No.3 to absorb the petitioners in Government services at an appropriate place like Government dispensaries and further be

pleased to direct the respondent No.3 to pay arrears on the basis of revised pay scale as per the Gujarat Civil Services (Revision of Pay) Rules, 1975 with effect from 1-12-74, after fixing the petitioners at an appropriate stage in the scale of Rs.210-270;

(iii) pending hearing and final disposal of this writ petition, to direct the respondent Municipality to fix the pay of the petitioners in the revised pay scale of Rs.210-270 and to make ad hoc payment to the petitioners of the arrears which is due, on account of revision of their pay scale from 1-1-1973.

the service of the State Government in the pay-scale of Rs.90-140. Under Government Resolution dated 20-8-1974 the Government City Dispensary, Anjar, was decided to be transferred defacto to Anjar Municipality on the terms and conditions as laid down therein. A copy of the aforesaid resolution has been filed by the petitioners as annexure-A to the writ petition. The petitioners have accepted the terms and conditions of the aforesaid Government Resolution. Clause (E) of the said resolution is relevant and it reads as follows:

"(E). The Class IV servant attached to the dispensary should be absorbed by the

Municipality in its service. The pension liability in the case of Class IV servants shall be in accordance with the provisions of Bombay C.R

Looking to the fact that the petitioners were in class IV service, attached to the dispensary, they were ordered to be absorbed by the Municipality so that the low paid employees, on transfer of the dispensary to the Municipality, may remain at their own place and may not be sent elsewhere to be absorbed by the Government where vacancies are available. The petitioners, as stated earlier, have not made any grievance whatsoever against their absorption under the Municipal services.

3. In the year 1975 the Gujarat civil Services (Revision of Pay)Rules, 1975 came to be published by the Finance Department Notification dated 21-10-1975. These revised pay-scales were given effect from 1-4-1974. Pay-scale of Rs.90-140 in which the petitioners were working came to be revised to Rs.210-270. After this revision the petitioners made representation from time to time praying therein that they may be given the pay-scale of Rs.210-270 with effect from 1-12-1974. Though the representations are in Gujarati, learned counsel for the petitioners has given out translated version thereof, and he frankly conceded that in none of the representations the petitioners have specifically challenged their absorption in the municipal service. Only in the representations filed in the eighties, through Union , for the first time their absorption in the Municipal service has been challenged by the petitioners.

4. The pay-scales which are given to the Government servants and the rules relating to revision of the said pay-scales are not automatically applicable to the municipal employees. The pay-scale and the revised pay-scales become applicable only when the same are adopted by resolutions passed by the municipalities. The revised pay-scales and the Rules of 1975 of the Government were adopted by the Anjar Municipality and made applicable to its employees from 1-8-1980 with certain modifications, and the petitioners are enjoying the revised pay-scales from the said date.

5. In para 21 of the writ petition the petitioners have come up with the case that petitioner No.1 has accepted the revised pay-scale from 1-1-1980. From the averments made in this paragraph it comes out that the pay of the petitioners has been revised from 1-1-1980, but they have not give out specifically all detailed facts. The respondent Municipality has not filed reply to the writ petition. But

during the course of arguments the learned counsel appearing for the respondent Municipality has orally stated that the pay-scale of the petitioners has been revised from 1-1-1980 and they are enjoying the same. This is a case where the petitioners have not only failed to disclose all the material facts, but they have made attempts to conceal the facts. But looking to the fact that the petitioners are class IV employees and this petition is pending since 1982 I am not taking very serious note of these things.

6. The petitioners have accepted their absorption in Anjar Municipal service without any objection and they have not challenged the Government resolution annexure-A at any stage. Now, after about eight years the petitioners came out to challenge their absorption. The relief, which the petitioners have prayed, to absorb them in Government service at proper place in Government dispensaries and to pay them revised pay-scale from 1-12-1974 cannot be accepted at this belated stage. By their conduct to accept absorption without any objection, the petitioners are estopped from making any grievance in this respect. In view of this fact the claim of the petitioners to give them revised pay-scale from 1-12-1974 cannot be granted.

7. The petitioners have already been given the benefit of revised pay-scale though from 1-1-1980. The petitioners having been absorbed in the Anjar Municipal services, they are entitled to the revised pay-scale from the date the same is adopted by their employer. The petitioners' claim for revised pay-scale as per Gujarat Civil Services (Revision of Pay) Rules, 1975 cannot be accepted for the reason that they ceased to be Government servants for all purposes from the date of their absorption in the Anjar Municipal Services under Resolution dated 20th August, 1974.

8. In the result this writ petition fails and the same is dismissed. Rule discharged, with no order as to costs.